

PDC Interpretation

APPROVAL DATE:	September 26, 2000	NUMBER:	00-05
STATUS:	New	SUPERSEDES:	None
REFERENCES:	RCW 42.17.130	APPROVED BY:	The Commission
SEE ALSO:			

Guidelines for Local Government Agencies, Including School Districts, in Election Campaigns

PUBLIC DISCLOSURE LAW RE: USE OF FACILITIES IN CAMPAIGNS

RCW 42.17.130

Forbids use of public office or agency facilities in campaigns.

No elective official nor any employee of his office nor any person appointed to or employed by any public office or agency may use or authorize the use of any of the facilities of a public office or agency, directly or indirectly, for the purpose of assisting a campaign for election of any person to any office or for the promotion of or opposition to any ballot proposition. Facilities of public office or agency include, but are not limited to, use of stationery, postage, machines, and equipment, use of employees of the office or agency during working hours, vehicles, office space, publications of the office or agency, and clientele lists of persons served by the office or agency: PROVIDED, That the foregoing provisions of this section shall not apply to the following activities:

- (1) Action taken at an open public meeting by members of an elected legislative body to express a collective decision, or to actually vote upon a motion, proposal, resolution, order, or ordinance, or to support or oppose a ballot proposition so long as (a) any required notice of the meeting includes the title and number of the ballot proposition, and (b) members of the legislative body or members of the public are afforded an approximately equal opportunity for the expression of an opposing view;
- (2) A statement by an elected official in support of or in opposition to any ballot proposition at an open press conference or in response to a specific inquiry;
- (3) Activities which are part of the normal and regular conduct of the office or agency.

RCW 42.17.131

Exemption from RCW 42.17.130.

RCW 42.17.130 does not apply to any person who is a state officer or state employee as defined in RCW 42.52.010.*

WAC 390-05-271

General applications of RCW 42.17.130.

(1) RCW 42.17.130 does not restrict the right of any individual to express his or her own personal views concerning, supporting, or opposing any candidate or ballot proposition, if such expression does not involve a use of the facilities of a public office or agency.

(2) RCW 42.17.130 does not prevent a public office or agency from (a) making facilities available on a nondiscriminatory, equal access basis for political uses or (b) making an objective and fair presentation of facts relevant to a ballot proposition, if such action is part of the normal and regular conduct of the office or agency.

WAC 390-05-273

Definition of normal and regular conduct.

Normal and regular conduct of a public office or agency, as that term is used in the proviso to RCW 42.17.130, means conduct which is (1) lawful, i.e., specifically authorized, either expressly or by necessary implication, in an appropriate enactment, and (2) usual, i.e., not effected or authorized in or by some extraordinary means or manner. No local office or agency may authorize a use of public facilities for the purpose of assisting a candidate's campaign or promoting or opposing a ballot proposition, in the absence of a constitutional, charter, or statutory provision separately authorizing such use.

BASIC PRINCIPLES

1. Public facilities may not be used to support or oppose a candidate or ballot proposition unless one of the exceptions in RCW 42.17.130 applies. Public facilities include equipment, communications systems, buildings, supplies, employee work time, and agency publications. The statute includes an exception to the prohibition for "activities which are part of the normal and regular conduct of the office or agency."

2. RCW 28A.320.090 authorizes the board of directors of any school district to expend funds to prepare and distribute information to the general public to explain the instructional program, operation and maintenance of the schools of the district. This includes informing the community of the needs the district faces and needs students have that the community may not realize exist provided that nothing in that statute is to be construed as authorizing preparation or distribution of information to the general public for the purpose of influencing the outcome of a school district election.

* Similar prohibitions on the use of public facilities by state employees and state officers are described in a memorandum from the Attorney General's Office regarding RCW 42.52 and available at www.wa.gov/ago/pubs.

3. No other unit of government has anything similar to this statutory language for school districts to rely on or guide them, but the Commission contends that local agencies have a responsibility, and hence the authority, to communicate with the public about the operation of the agency or jurisdiction.
4. Local employees do not forfeit their rights to engage in political activity because of their employment so long as they do so during non-work hours and without using any public resources. Neither may public employees be subjected to coercion, pressure, or undue influence to participate in political activity or to take a particular position. When they participate in political activity, on their own time, public officials and employees should make it clear that their participation is personal rather than officially sanctioned.
5. Supervisory personnel have a duty to know, apply and communicate to their staff, the difference between acceptable information activities and inappropriate activities that support or oppose a ballot measure.
6. Elected representatives of a jurisdiction are free to vigorously support ballot issues and engage in other political activities as long as such activities do not make use of public facilities, time or resources and do not either pressure or condone employees' use of public facilities, time or resources to support ballot issues.
7. The PDC is charged with enforcing RCW 42.17.130. This requires consideration and analysis of activities which may or may not be determined to be in violation of the statute. The PDC has, over the years, developed methods of considering and analyzing activities engaged in by local government offices and agencies. Among the factors considered are the normal conduct of the office or agency and the timing of activities as compared with ballot measure elections. As in any matter where intent is to be considered, hard and fast rules which will be applicable to all situations are difficult to establish.

The combination of any number of activities involving close coordination between a local agency and a citizens' committee which resembles traditional election campaigning and which is undertaken in anticipation of and/or occurs near in time to a ballot measure election is likely to draw scrutiny from the PDC regarding a possible violation.

Activities that Violate RCW 42.17.130

- 1) Using work hours to:
 - solicit signatures for ballot propositions,
 - raise funds for or against candidates or ballot propositions, or
 - organize or conduct campaigns for or against candidates or ballot propositions.
- 2) Using public property to campaign for or against a candidate or ballot proposition, except when a public building or playing field is customarily made available on an equal access, nondiscriminatory basis for a variety of uses, including political activities. That is, the facility is merely a "neutral forum" where the activity is taking place, and the public agency in charge of the facility is not actively endorsing or supporting the activity that is occurring.

- 3) Using public resources -- office space, computers (including electronic mail and other information technology systems), copiers, telephones, postage meters or any type of equipment, paper, supplies, or anything else belonging to the agency -- to aid campaigns for or against a candidate or ballot measure, whether during working hours, before or after the work day, or on weekends.
- 4) Carrying or displaying political material in or on publicly owned vehicles.
- 5) Displaying or distributing campaign material on publicly owned or operated premises; however, if an agency does not have a policy prohibiting employees from wearing campaign buttons or similar items while on-the-job, employees are not prevented from doing so by the public disclosure law.
- 6) Using public supplies, equipment, or facilities to print, mail, or otherwise produce or distribute materials supporting or opposing a candidate or ballot proposition.
- 7) Using publicly owned facilities to instruct or urge public employees to campaign for or against a candidate or ballot proposition on their own time, or to state or imply that their job performance will be judged according to their willingness to use their own time on a campaign.

Activities that Do Not Violate RCW 42.17.130

- 1) An elected legislative body may collectively vote to support or oppose a ballot measure so long as proper public notice of the meeting references the ballot proposition's title and number, and persons who oppose the proposition are given an approximate equal opportunity to express their views.
- 2) An elected official may make a statement supporting or opposing a ballot proposition at an open press conference, or in response to a specific question from the public. (However, the statute does not authorize the official's staff to draft, type or distribute a press release while using public facilities.)
- 3) An elected official or public employee may prepare balanced, objective, accurate information on the anticipated impact of a ballot proposition and distribute it in a manner customary for the agency.
- 4) While using public facilities, officials and employees may register persons to vote and do periodic poll checking.
- 5) An elected official who is not being compensated and is not using any public equipment, vehicle or other facility, may attend any function or event at any time during the day and voice his or her opinion about a candidate or ballot proposition. Further, the official may use his or her title when making these appearances, but should clarify that he/she is only speaking on behalf of him or herself, not the agency.

- 6) Any public employee, on his or her own time and without using any public facility, may support or oppose a candidate or ballot proposition. This includes putting bumper stickers and other legal signs on private vehicles (even if those private vehicles are parked on public property during working hours).

Questions Commonly Asked On Use of Public Facilities in Campaigns

1. Question: May a local agency publish a brochure or printed piece outlining the anticipated impact of a proposed ballot measure?

Answer: The Commission has operated under the presumption that local agencies have a responsibility to communicate with the public about the operation of the agency or jurisdiction. Local agencies can make an objective, balanced, accurate and fair presentation of facts relevant to a ballot proposition.

Local agencies may generally publish a “fair presentation of facts” relevant to an election matter, however the determination of the propriety of the public expenditure depends upon a careful consideration of such factors as the style, tenor and timing of the publication; no hard and fast rule governs every case. Be careful that photos or graphics used in the fact sheet do not advocate support or opposition of a ballot measure.

A growing number of glossy sales pieces are being put out by public entities. They may be factual, but they look very much like promotional material designed to influence the election. The public perception is that they are campaign literature. Such pieces do as much, or more, damage to public goodwill and confidence than a finding of a violation of law by the Commission.

2. Question: How may a local agency distribute factual information about a ballot measure?

Answer: A local agency may distribute factual information to all citizens within its jurisdiction. Each agency can determine the best way to distribute information to the public without targeting individuals or use of marketing techniques that promote or oppose the ballot measure.

3. Question: May a local agency prepare different materials for different audiences?

Answer: A local agency may only prepare one fact sheet for distribution in a normal and regular manner. Publishing different information for selected audiences is promotional. If it can be demonstrated that there is confusion about factual information of a ballot measure, a jurisdiction may then send clarifying information to the citizens in the same manner as the initial fact sheet.

4. Question: May local agency personnel participate in the formulation of a plan for activities associated with a ballot measure when the plan provides for promotional activities to be conducted by a citizens' committee and informational activities to be conducted by local agency personnel?

Answer: It is appropriate for local agency personnel to develop and provide information about a ballot issue to the community so that the electorate can cast informed ballots. It is also important for supervisory personnel to clearly delineate which activities are informational and which are promotional so that agency staff does not use public facilities to promote the ballot issue.

Agency personnel may participate on their own time and without using public resources in the activities of a citizens' committee formed to support or oppose a ballot proposition.

Supervisory employees may not pressure or influence employees to participate in campaign activities. A plan developed or approved by supervisory employees which closely coordinates local agency informational activities with promotional or opposition efforts of a committee will subject the agency to scrutiny by the Commission.

Agency directors are free to participate fully in planning and executing campaign activities in support of or opposition to ballot measures as long as public facilities are not used.

5. Question: May local agency publications inform staff of promotional activities and the opportunity to participate in those activities; and to what extent can publications encourage employees to participate in promotional activities?

Answer: If agency publications normally and regularly inform staff of private activities in which they might wish to participate, a community calendar, for instance, it is appropriate to include dates, times and places of promotional activities in support of ballot issues. The agency must also afford similar opportunities to those advertising activities in opposition to the ballot measure as well as other private activities. It is important not to misuse this forum for communicating factually by engaging in activities that promote or oppose a ballot measure.

It is permissible to allow campaign committees to use public facilities on the same terms and conditions as other community groups, and complete schedules of such uses may be distributed to staff. Supervisors are obligated to brief staff on the distinction between informational activities and activities that advocate for or against a ballot measure, emphasizing that improperly using public facilities to promote or oppose a ballot measure is illegal.

6. Question: May local agency publications encourage staff to vote, including permitting staff to wear "vote" stickers?

Answer: Yes, it is permissible to encourage civic participation by staff and members of the community, as long as such encouragement occurs for other elections, and not just for a ballot measure election involving your jurisdiction. Additionally, it is permissible, if consistent with agency policy, for staff to personally choose to wear any political buttons, including those urging support, or opposition, to a ballot measure. Local agency personnel may not organize an effort to get staff to wear campaign buttons.

7. Question: May local agency administrators inform, through internal memoranda, their department directors, supervisors, and administrative staff of meetings of groups supporting or opposing ballot measures? If so, to what extent may agency administrators encourage attendance at those meetings?

Answer: No. Internal memoranda are created on agency supplies with agency equipment by agency personnel on public time. Such facilities may not be used to promote or oppose a ballot measure. Administrators may not encourage employees to participate in campaign activities and must avoid giving the impression to employees that participation in campaign activities is required or is a condition of advancement or continued employment.

8. Question: May local agency publications describe to the community the importance of voting in any election and encourage citizens to vote, register to vote and request absentee ballots?

Answer: Yes, as long as such activities are done throughout the year in the same manner for all elections, not just for a ballot measure election involving your jurisdiction. Such activities may not be used to promote or oppose ballot measures.

9. Question: May a local agency conduct market research to determine the feasibility of a levy or bond measure passing in the community?

Answer: When a local agency conducts market research within the community it is limited to determining community priorities and/or public perception of the agency's performance. Market research on whether or not to place a measure before the public for a vote and at what taxation level the public would support could be considered activity that supports a ballot measure.

10. Question: To what extent may the local agency organize a telephone survey in which persons who voted in the past several elections are called and asked if they support or oppose the ballot measure; persons who answer positively or are undecided are then sent factual information and reminded to vote?

Answer: A survey that targets voters and is designed to shore up support or opposition for a ballot measure is an inappropriate public expenditure. Agencies may survey their communities in a variety of ways, both to determine what the community believes is important and to inform the community about programs and policies. However, an agency may not use public resources, time or facilities to target voters or to survey in a method designed to identify and advocate for or against ballot measures.

11. Question: May a local agency sell to advocacy groups information it has obtained regarding names, addresses and phone numbers of citizens who voted in previous elections?

Answer: Public records obtained by the agency for proper agency purposes are statutorily required to be available to anyone who requests them. A "list of individuals" prepared by a local agency may not be used for commercial purposes. The agency may only recover its costs in providing copies of such records.

12. Question: May agency personnel, during non-working hours, distribute materials supporting or opposing a ballot measure on agency property?

Answer: The Commission has not taken exception to campaign groups using public facilities so long as use is made available on a non-discriminatory, equal access basis and is normal and regular for the local agency to provide such activity. If the local agency allows the proponents of a ballot measure to distribute materials, it must allow the opponents to do so also. If the local agency charges one group rent, it must charge the other group at the same rate.

Agency personnel, on their own time and not in uniform, may distribute campaign materials as long as public resources are not used.

13. Question: May an advocacy group for a ballot measure solicit vendors or contractors doing business with an agency for donations?

Answer: The restriction on “clientele lists” is not quite as complete as it might seem. Such lists are public records. Their release is governed by the public records provisions of RCW 42.17.250 et seq. If the list is generally available to the public, it cannot be denied to someone who says they will, or who it is thought might, use it in a campaign. If the list is made available to the proposition supporters, it must be made available to the opponents, if they ask.

14. Question: May the information in the published factual information about a ballot measure be posted on a local agency web page?

Answer: Yes. The fact sheet in its entirety may be posted on the agency’s web page.

15. Question: At what point in time does a local agency become subject to the law prohibiting use of public facilities in campaigns?

Answer: A local agency is always subject to the statutory prohibition of using public facilities in campaigns. The timing of a particular activity will be a significant element in the “normal and regular” conduct assessment. An activity that may pass the test at one point in time may fail the test at another time.

Activity performed by a local agency in anticipation of a ballot measure may very well be looked at by the Commission as advocating support or opposition of the measure.

16. Question: May a union representing public employees distribute materials supporting or opposing a ballot measure on the local agency property?

Answer: The distribution of campaign materials by union representatives to their members must be limited to the agency lunchroom or break room which is dedicated to staff and not accessible to the general public.

The Commission has said that the internal mail system of an agency is a public facility. In PDC Declaratory Ruling No. 4 (5/27/1980), the Commission reaffirmed a decision it made in an enforcement setting that the use of a local agency’s internal mailing systems for candidate

endorsements would violate RCW 42.17.130. The same conclusion applies to using an agency's internal mail system to distribute materials supporting or opposing a ballot measure.

17. Question: May the union post campaign materials on the union's bulletin board located in the local agency facility?

Answer: Only if the local agency, under union contract, provides a bulletin board in an area that is not accessible to the general public.

18. Question: May staff or board members make presentations explaining a ballot measure to service clubs, neighborhood groups, and others?

Answer: Yes, if requested by a group or organization to present factual information about a ballot measure including its anticipated impact on the community. Promotional activity by public employees must be done on their own time outside of normal working hours.

The use of public facilities in arranging or conducting speaking engagements to discuss the merits of a ballot measure would be prohibited.

19. Question: May a local agency's planning documents, such as a five-year plan assume the passage or failure of a ballot measure when developing financial projections?

Answer: It is important for local agencies to develop plans that take many contingencies into account, including passage and failure of a ballot measure.